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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LOUIS A. CARDINALI,

Plaintiff,

v.

PLUSFOUR, INC; RC WILLEY HOME
FURNISHINGS; WEBBANK/DELL
FINANCIAL SERVICES; EQUIFAX
INFORMATION SERVICES, LLC;
EXPERIAN INFORMATION SOLUTIONS,
INC.,

Defendants.

Case No. 2:16-cv-02046-JAD-NJK

**EXPERIAN INFORMATION SOLUTIONS,
INC.'S RENEWED MOTION FOR
SANCTIONS**

1 Pursuant to the Court's March 25, 2021 order, Experian Information Solutions, Inc.
2 ("Experian") hereby renews its Motion to Sanction David Krieger, Miles Clark, and Matthew
3 Knepper.¹

4 Mindful of the Court's request not to engage in a "tit for tat" recitation, Experian presumes
5 the Court is familiar with the material facts related to this Motion. In short, what started as two
6 fairly straightforward Rule 45 subpoenas on Haines & Krieger, LLC ("H&K") to identify its role
7 in Plaintiff's dispute and discover facts necessary to determine if H&K was indeed a credit repair
8 organization, resulted in a cascade of abuse by H&K and its counsel Messrs. Krieger, Clark, and
9 Knepper significant enough that Judge Koppe characterized it as "troubling and wrong," ECF No.
10 157 at 1:27; *see also* ECF No. 167 at 3:9-11 ("Judge Koppe essentially says that attorney and
11 deponent misconduct is rife in the transcript, and having reviewed that transcript, I agree."). This
12 abuse and evasion was costly, requiring Experian to file multiple motions to compel and sanction
13 to bring the issue to the Court's attention, and required Judge Koppe to conduct a two-day
14 evidentiary hearing in order to get truthful answers from H&K.

15 All of this could have been avoided by a more measured and reasonable response by H&K
16 and its attorneys to Experian's subpoenas in the first place. Certainly, once its Motion to Quash
17 had been roundly denied, *see* ECF No. 85, the writing was on the wall. H&K's only reasonable
18 route forward was complying and negotiating in good-faith. Unfortunately, H&K chose another
19 route and that choice has had costly consequences.

20 As the Court notes, the posture of this case has changed since the Court last addressed this
21 issue. On September 26, 2019, the Court granted Experian's Motion for Summary Judgment. ECF
22 No. 208. Plaintiff did not appeal this decision. Accordingly, Experian is no longer seeking
23 exclusionary sanctions or any adverse inferences. Further, H&K is no more, with George Haines
24 now operating Freedom Law Firm, *see* George Haines, [https://freedomlegalteam.com/about-](https://freedomlegalteam.com/about-us/attorney-profile/george-haines/)
25 [us/attorney-profile/george-haines/](https://freedomlegalteam.com/about-us/attorney-profile/george-haines/), and Mr. Krieger now operating his own firm, the Krieger Law

26 ¹ Experian is not seeking sanctions against George Haines, David Krieger's former partner.
27 Mr. Haines did not enter an appearance in this case and appears not to have been involved in the
28 conduct at issue.

1 Group. *See* Our Firm, <http://kriegerlawgroup.com/about-us/our-firm/>. Sanctions against the now
 2 non-existent H&K would be futile and any finding that H&K was a credit repair organization is
 3 largely beside the point. Instead, Experian only wants to be made whole for the significant costs it
 4 has incurred due to the abuse and evasion at issue. The reality is that Messrs. Krieger, Clark, and
 5 Knepper's actions forced Experian to incur significant costs and fees that could have readily been
 6 avoided. Specifically, Experian asks the Court to award as sanctions Experian's reasonable costs
 7 and fees for:

8 1) The November 1, 2018 deposition of Laura Ferranti; and

9 2) Experian's Motions to Compel H&K's Compliance with Experian's Subpoenas,
 10 including cost and fees for the May 2019 evidentiary hearing.

11 Additionally, Experian asks the Court to award Experian its reasonable costs and fees for
 12 filing this Motion and any subsequent fee petition filing akin to a Local Rule 54-14 motion. After
 13 reviewing the Court's March 25, 2021 order, Experian's counsel reached out to Messrs. Krieger,
 14 Clark, and Knepper to engage in settlement negotiations. *See* Hall Decl. at ¶ 2; Exhibit A (April 6,
 15 2021 email thread between C. Hall and M. Knepper). Their only response was to say that
 16 Experian's initial demand was "north of Pluto" and to offer only costs for Ms. Ferranti's
 17 deposition, conditioned on no admission of wrongdoing. Exhibit A at 1. Further briefing, cost, and
 18 waste could have been avoided by Messrs. Krieger, Clark, and Knepper, but again, they chose the
 19 more difficult and costly route. Experian has made a preliminary accounting of its costs as detailed
 20 below. Once the Court has agreed as to the exact events for which sanctions are warranted,
 21 Experian will submit its fee petition filing, providing all the requisite materials.

22 **Legal Standard**

23 Federal courts have broad authority to issue sanctions to correct and prevent abuse that
 24 occurs before the court. Federal Rule of Civil Procedure 30(d)(2) provides that "[t]he court may
 25 impose an appropriate sanction—including the reasonable expenses and attorney's fees incurred
 26 by any party—on a person who impedes, delays, or frustrates the fair examination of the
 27 deponent." Similarly, Federal Rule of Civil Procedure 37(b)(1) provides that when a court has
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1 ordered a deposition to proceed “and the deponent fails to obey, the failure may be treated as
2 contempt of court.” Rule 37 also provides that the failure to disclose discovery is sanctionable.
3 Fed.R.Civ.P 37(c)(1)(C). Federal Rule 11(c) allows the Court to issue sanctions when an attorney
4 signs a pleading or motion that is “presented for any improper purpose” and includes legally
5 meritless or factually unsupported allegations. *See* Fed.R.Civ.P. 11(b). It has long been recognized
6 that “a federal court has the power to control admission to its bar and to discipline attorneys who
7 appear before it.” *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43, 111 S. Ct. 2123, 2132, (1991).
8 Sanctions are appropriate to address bad-faith conduct, correct discovery abuses, or to compensate
9 the aggrieved party harmed by the sanctionable conduct. *See, e.g. In re Rainbow Mag., Inc.*, 77
10 F.3d 278, 280 (9th Cir. 1996) (Before the Court can rely on its inherent powers to sanction an
11 attorney it must “assess an attorney's individual conduct and to make an explicit finding that he or
12 she acted in bad faith.” *Primus Auto. Fin. Servs., Inc. v. Batarse*, 115 F.3d 644, 650 (9th Cir.
13 1997)). A finding of “bad faith” covers a broad range of “willful improper conduct” and does not
14 require a finding of frivolousness or false assertions of fact. *See Fink v. Gomez*, 239 F.3d 989, 992
15 (9th Cir. 2001). “[S]anctions are justified when a party acts *for an improper purpose*-even if the
16 act consists of making a truthful statement or a non-frivolous argument or objection.” *Id.*

17 Monetary sanctions are authorized by a number of sources. Rule 30(d)(2) expressly
18 anticipates sanctions including “the reasonable expenses and attorney's fees incurred by any party”
19 when a deposition is improperly obstructed. Fed.R.Civ.P. 33(d)(2). Rule 37 in turn provides that,
20 when a motion to compel is granted “the court *must*, after giving an opportunity to be heard,
21 require the party or deponent whose conduct necessitated the motion, the party or attorney advising
22 that conduct, or both to pay the movant's reasonable expenses incurred in making the motion,
23 including attorney's fees” absent a showing of good faith or that sanctions would be unjust. *See*
24 Fed.R.Civ.P. 37(a)(5)(emphasis added). Rule 11 allows the court to “direct[] payment to the
25 movant of part or all of the reasonable attorney's fees and other expenses directly resulting from
26 the violation.” Fed.R.Civ.P. 11(c)(4). Similarly, 28 U.S.C. § 1927 provides that “any attorney or
27 other person admitted to conduct cases in any court of the United States or any Territory thereof
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1 who so multiplies the proceedings in any case unreasonably and vexatiously may be required by
 2 the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred
 3 because of such conduct." The purpose of monetary sanctions is "to deter attorney misconduct, to
 4 compensate the victims of an attorney's malfeasance, or to both compensate and deter." *Haynes v.*
 5 *City & Cty. of San Francisco*, 688 F.3d 984, 987 (9th Cir. 2012); *Goodyear Tire & Rubber Co. v.*
 6 *Haeger*, 137 S. Ct. 1178, 1184, 197 L. Ed. 2d 585 (2017) (fee award issued under court's inherent
 7 power is limited to "fees that party would not have incurred but for the bad faith").

8 ARGUMENT

9 **I. THE COURT SHOULD AWARD EXPERIAN ITS COSTS AND FEES RELATED** 10 **TO THE NOVEMBER 1, 2018 DEPOSITION OF LAURA FERRANTI.**

11 The improper behavior that occurred at the deposition of H&K's Rule 30(b)(6) deposition
 12 has been painstakingly detailed previously, and need not be repeated in full. *See* ECF Nos. 99;
 13 129. In brief, when Judge Koppe denied H&K's motion to quash, she ordered H&K to prepare a
 14 witness to testify on the designated topics. ECF No. 95 at 10. H&K simply refused to do so,
 15 designating Ms. Ferranti, who, after meeting with Mr. Clark and Mr. Krieger, gave a litany of "I
 16 don't knows" that were evasive at best and intentionally dishonest at worst. *See* ECF No. 131-2 at
 17 12-14 (Testimony of L. Ferranti regarding discussion with D. Krieger and attorneys). Mr. Clark
 18 assisted in this by lodging frequent dog-whistle objections with the design to elicit Ms. Ferranti's
 19 testimony. *See* ECF No. 131 at 7-8 (Declaration of C. Hall tabulating "I don't know" responses
 20 and related objections and responses). Judge Koppe has already found that this conduct violated
 21 her order. ECF No. 157 at 1: 24-57 ("it is abundantly clear that Haines & Krieger did not comply
 22 with its obligations to provide deposition testimony, instead offering a Rule 30(b)(6) witness who
 23 was not prepared to testify, who regularly provided evasive and ridiculous answers to questions
 24 posed, and who was improperly coached by counsel (Miles Clark).").

25 This conduct warrants sanctions for numerous reasons. First, it plainly evidences efforts by
 26 Mr. Krieger and Mr. Clark to obstruct the deposition. *See* Fed.R.Civ.P. 30(d)(2). It also tells of
 27 bad-faith, using objections for an improper purpose, and violates basic canons of legal ethics.
 28 *See, e.g.,* Nev. Rules of Prof. Conduct 3.5 (prohibiting lawyers from "[u]nlawfully obstruct[ing]

1 another party's access to evidence or unlawfully alter, destroy or conceal a document or other
2 material having potential evidentiary value" assisting with that obstruction, or to "counsel or assist
3 a witness to testify falsely").

4 A finding of bad faith is apt here for Mr. Krieger, Mr. Clark, and Mr. Knepper. Mr. Krieger,
5 as principal of H&K is bound by its designee's conduct, and in any event, seemingly consulted
6 with Mr. Clark and Ms. Ferranti beforehand. *See, e.g.*, Mr. Clark's bad faith is evident from the
7 transcript itself. Mr. Knepper has no excuse for sitting idly by while this conduct played out. Even
8 if he was unaware of the plan before the November 1, 2018 deposition, his refusal to correct the
9 record, and later subsequent defense of it warrants a bad-faith finding.

10 It is likewise appropriate to compensate Experian for the costs it incurred in preparing for
11 and taking this deposition. When it served its subpoenas on H&K, Experian knew that it would
12 incur the fair costs associated with deposing a properly prepared witness. Experian anticipated that
13 H&K might initially refuse. Experian thus is not seeking compensation for responding to H&K's
14 motion to quash, or for the fees associated with the subsequent court-ordered deposition of David
15 Krieger. However, Experian did not expect the orchestrated farce that occurred on November 1,
16 2018 and there is no sound basis for Experian to bear those costs.

17 **II. THE COURT SHOULD AWARD EXPERIAN THE COSTS RELATED TO ITS**
18 **MOTIONS TO COMPEL.**

19 H&K's refusal to cooperate with Experian's subpoenas required Experian to file multiple
20 motions to compel. On November 21, 2018, Experian filed its first motion. ECF No. 100. Briefing
21 this Motion involved multiple filings, including various responses and replies. Judge Koppe found
22 the various cross and counter motions confusing and ordered Experian to file a renewed motion.
23 ECF No. 128. Experian did so on January 29, 2019. ECF No. 130. With these Motions, Experian
24 also moved for sanctions related to the November 1, 2018 deposition. ECF No. 129. Judge Koppe
25 granted this last motion in part, ordering H&K to provide another deponent, ECF No. 157, then
26 ordered a two-day evidentiary hearing and ordered that H&K produce another deponent for
27 deposition. ECF Nos. 157-58. H&K launched unsuccessful objections, and following the
28 evidentiary hearing, Judge Koppe then granted in part Experian's Motion to Compel. ECF No.

1 180. In granting Experian's Motion, Judge Koppe explained that the evidentiary hearing was
2 required due to the misconduct and contradictory testimony H&K had offered previously. *See* ECF
3 No. 180 at 6. H&K lobbed emergency objections that were denied. ECF No. 185.

4 There is ample reason to award Experian its fees and costs associated with the briefing its
5 motions to compel, the resulting evidentiary hearing, and responding to H&K's objections and
6 related motions to strike. Initially, because Experian's motions were largely granted (H&K was
7 ordered to produce responsive documents and to provide another witness), Rule 37 requires an
8 award of reasonable costs and attorney's fees, absent a showing by H&K that its opposition was
9 substantially justified. *See* Fed.R.Civ.P. 37(a)(5)(A). H&K has never tried to explain how its
10 opposition was justified, and it cannot fairly do so now. Experian has previously explained how,
11 despite Experian's repeated offers to compromise and narrow its subpoenas, H&K and its lawyers
12 never conferred in good faith, or even considered the more narrow requests. *See, e.g.*, ECF No.
13 190 at 6-7 (describing meet and confer history and evidentiary hearing testimony regarding H&K's
14 failure to consider narrowed requests). Experian has also detailed the many contradicting positions
15 H&K has taken in responding to Experian's subpoenas, from claiming the burden would shut
16 H&K's business down, to disingenuously denying using a template dispute letter, only to later
17 admit it when forced to testify under oath with Judge Koppe present. *See id.* at 8; ECF No. 180 at
18 6:13-14 (order granting motion to compel stating "[t]he need for the hearing is also evident in its
19 results. For example, Ms. Ferranti effectively admitted at the hearing that some of her deposition
20 testimony was untruthful.").

21 Sanctions against Messrs. Krieger, Clark, and Knepper are also appropriate under both
22 Federal Rule 11 and 28 U.S.C. § 1927. Among the many vexatious and unsupported claims H&K
23 and its attorneys have made included assertions that H&K does not use form template letters, *See*,
24 *e.g.*, ECF No. 177 at 93:21-94:4 ("THE COURT: So essentially what you do is you have this letter,
25 and you change out the personal information, and the rest of it is the same, correct? Is that what
26 you're saying? You say it's a letter that's been rehashed so it -- it's used over and over again with
27 different personal information? THE WITNESS: Correct, correct. I think that would be more or
28

1 less correct), claims that complying with the subpoena in any fashion would shut H&K's business
 2 down, *see* ECF No. 180 at 5:16-12 (Order granting motion to compel explaining "[m]aking matters
 3 worse, Experian unearthed sworn testimony from Mr. Krieger himself that appeared to contradict
 4 the declaration."), and its repeated insistence that Experian could not pursue discovery as to
 5 whether H&K was a credit repair organization without evidence first proving that to be true, *see*
 6 *e.g.*, ECF No. 94 at 6:3-10 (Miles Clark failing to respond to question from Magistrate Judge
 7 Koppe: "And is there any legal authority that your client can avoid the scrutiny of a deposition by
 8 producing a declaration disputing the facts -- the very facts that would be explored at that
 9 deposition?"); ECF No. 180 at 9:13-14 ("Haines & Krieger also argues repeatedly that discovery
 10 into whether it acted as a credit repair organization is improper because it denies being one. The
 11 Court has heard several variations of this argument from Haines & Krieger and has already rejected
 12 it . . . The entire premise of Haines & Krieger's argument is faulty.").

13 Most glaring, and most troubling, has been H&K's repeated misrepresentations, advanced
 14 through counsel and made in signed filings to the Court, that it did not receive any compensation
 15 related to the sending of disputes and the resulting litigation. *See, e.g.*, ECF No. 106 at 5:1-11
 16 ("H&K's 30(b)(6) testified that it '**doesn't receive fees, charge fees, receive compensation,**
 17 **charge, or anything else, receive money, for sending dispute letters.**'")(emphasis original);
 18 ECF No. 119 at 2:19-20 ("*H&K never receives any money or other valuable consideration for*
 19 *assisting consumers with their disputes with Experian's reporting about them.*")(emphasis
 20 original); ECF No. 137 at 5:1-11 ("This testimony foreclosed any lingering basis for more
 21 discovery that will only reveal the same answers."). Once H&K was finally forced to produce
 22 documents, these documents revealed exactly what Experian had suspected: H&K received its
 23 compensation by way of recovering its fees through settlements in the litigation that resulted after
 24 H&K sent dispute letters. Plaintiff's own retention agreement is telling. In it, Plaintiff
 25 acknowledged "[REDACTED]
 26 [REDACTED]
 27 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 28

1 [REDACTED].” (Hall Decl. Exhibit B at 2) (emphasis
2 original). The agreement acknowledged that H&K “[REDACTED]
3 [REDACTED]
4 [REDACTED]” *Id.* The agreement also acknowledged that [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]” *Id.* In short, the truth was always as Experian suspected, and contrary to
8 H&K’s repeated representations to the Court, advanced by Messrs. Krieger, Clark, and Knepper.
9 These misleading (if not outright false) statements are independently sanctionable under Federal
10 Rule 11 and 28 U.S.C. § 1927 and warrant sanctions here.

11 The significant cost Experian has had to incur simply to uncover the truth in this case was
12 unnecessary, as were the many hours the Court has had to contend with this issue. The Court
13 should award Experian the costs incurred related to all of its briefing of these issues as well as the
14 two-day evidentiary hearing. The record makes clear that, until forced to testify with Judge Koppe
15 present, H&K intended to stick to its misrepresentations about the nature of its business and the
16 burdens of complying with Experian’s subpoenas. The monetary sanctions Experian seeks are
17 appropriate given the level of dishonesty and lack of candor the record demonstrates. Worse, it
18 seems as though H&K and its lawyers continue to believe they have done nothing wrong, as their
19 only offer of compromise required a denial of any liability for their actions. *See* Ex. A at 1.

20 CONCLUSION

21 For the above stated reasons, the Court should enter an order sanctioning David Krieger,
22 Miles Clark, and Matthew Knepper and requiring them to pay Experian its reasonable costs and
23 fees for the November 1, 2018 deposition of Laura Ferranti, Experian’s Motions to Compel,
24 including the evidentiary hearing conducted as a part of Experian’s Motion. The Court should also
25 award Experian its reasonable costs and fees for this Renewed Motion and any subsequent fee-
26 petition.

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1 In its Order granting Experian's Motion for reconsideration, the Court asked Experian to
 2 "quantify" the sanctions it seeks. Experian has thus begun the process of collecting the documents
 3 and information required for a fee petition.² Based on its initial review, Experian estimates that its
 4 attorneys expended approximately 440 hours related to the issues discussed in this Motion, and
 5 that Experian has incurred costs and fees in excess of \$265,000. Once the Court has found that
 6 Experian is entitled to compensatory sanctions, and for what misconduct, Experian will complete
 7 this filing.

8
 9 JONES DAY

10
 11 By: /s/ Jennifer L. Braster

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 25 ² It was not clear if the Court was asking Experian to provide a fee petition or memorandum
 26 of fees and costs akin to LR 54-14 Motion as the sanctions have not yet been granted. If the Court
 27 grants Experian's motion for sanctions for the work performed on the categories quantified above,
 28 Experian will provide such memorandum. To the extent the Court would like Experian to
 supplement this Motion with such information now, prior to ruling on Experian's Motion, Experian
 will gladly do so.

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that on this 9th day of April, 2021, I caused the above document to be filed with the Court's CM/ECF system which will effectuate service on all counsel of record.

/s/ Jennifer L. Braster
An Employee of NAYLOR & BRASTER

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